

TENTATIVE RULINGS for CIVIL LAW and MOTION

March 10, 2010

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

TENTATIVE RULING

Case: **Hayden v. Shestowsky**
Case No. CV CV 08-3382

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendant's motion to compel further responses to discovery and for monetary sanctions is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., §§ 2030.300, subd. (b); 2031.310, subd. (b)(2), and 2033.290, subd. (b).) The parties must engage in meaningful and good faith discussions to narrow and/or resolve their discovery disputes before filing a motion. The Court recommends that counsel refer to *Townsend v. Superior Court of Santa Barbara County* (1998) 61 Cal.App.4th 1431, 1435 for an understanding of their obligation to engage in a "serious effort at negotiation and informal resolution" of each issue in the defendant's motion. The Court will impose monetary sanctions if it finds that any party/counsel failed to make a good faith effort to informally resolve the discovery issues in dispute. Following her best efforts to informally resolve each issue in her motion, the defendant may bring a motion based on the supplemental discovery responses Plaintiff served on October 26, 2009, if such motion is filed by April 9, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **JPMorgan Chase Bank, National Assoc. v. Reyniel**
Case No. CV UD 09-1439

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

The filing of Paz Verano's third bankruptcy action does not stay this proceeding. (11 U.S.C. § 362, subd. (c)(4)(A)(i).)

Plaintiff's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiff's unopposed motion for summary judgment is **GRANTED**. (Code Civ. Proc., § 1170.7.) There is no triable issue of material fact about the plaintiff's unlawful detainer cause

of action. (Declaration of Earl Wallace ¶¶ 2-5 and exhibits thereto; Declaration of Hector Lopez ¶¶ 1-3; Declaration of Oleg Khrystov ¶¶ 1-2 and exhibit thereto.) Plaintiff is entitled to possession of the subject premises.

Plaintiff is directed to prepare and to submit to the Court a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

Plaintiff shall serve the defendants with notice of the entry of the Court's order within seven days of the Clerk's service of the signed order.

TENTATIVE RULING

Case: Kumansky v. Sanders
Case No. CV CV 09-3331

Hearing Date: March 10, 2010 Department Fifteen 9:00 a.m.

The Court did not consider the plaintiff's late-filed opposition brief. Plaintiff must comply with the requirements of the Code of Civil Procedure, including those provisions governing the deadline for the filing of papers (Code Civ. Proc., § 1005, subd. (b)).

The defendant's request for judicial notice is **GRANTED**. The Court may take notice of the existence of Exhibits 1 through 6 of Steven Sanders' request for judicial notice. (Evid. Code, § 452, subd. (d).)

Steven Sanders' demurrer to the complaint: The demurrer is **OVERRULED**. It cannot be determined from Exhibits 1 through 5 of Steven Sanders' request for judicial notice that to date no action has been taken in relation to the plaintiff's creditor's claim. For purposes of a demurrer, the Court must deem the factual allegations pled in the complaint to be true. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43.) The facts pled do not preclude a showing of damages.

Motion to strike by Steven Sanders, individually and dba Sanders and Associates, Sanders and Associates, a corporation, Sanders and Associates, an association, Sanders and Associates, a partnership, Steven C. Sanders, an officer of Sanders and Associates, a corporation, and Steven C. Sanders, a partner of Sanders and Associates, a partnership:

The motion to strike is **DENIED**. As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a).) The matters stated in Steven Sanders' declaration, which form the bases for the motion to strike, do not appear on the face of the complaint and are not matters of which this Court has been asked to nor may take notice.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Midland Funding, LLC v. Jimenez**
Case No. CV G 09-542

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

Irma Y. Jimenez' motion to set aside and vacate the entry of default and default judgment against her is **DENIED WITHOUT PREJUDICE**. Ms. Jimenez did not submit a copy of the answer or other pleading she proposes to file in this action. (Code Civ. Proc., § 473, subd. (b); Code Civ. Proc., § 473.5, subd. (b).) If Ms. Jimenez brings her proposed pleading to the hearing, the Court is inclined to grant her motion. No request for hearing is required.

The motion Ms. Jimenez filed does not comply with the California Rules of Court. Ms. Jimenez must comply with the California Rules of Court, including rules 2.108(4), 2.109, and 2.111(1), in the future.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Ochoa v. Long Beach Mortgage Company**
Case No. CV CV 09-2398

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

This matter is moot. Plaintiffs filed a first amended complaint on March 4, 2010.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Shankaran v. Aginago**
Case No. CV UD 10-281

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

The moving papers are accompanied by a proof of service showing service of a copy of the defendants' demurrer on the plaintiff at 2138 Hickory Way, Unit C in West Sacramento, which is the defendants' address. There is no proof of service showing service of the demurrer on the plaintiff at his address of record in this case. Accordingly, the unopposed demurrer is **OVERRULED WITHOUT PREJUDICE**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Slaven v. Cramer et al.**

Case No. CV CV 07-2674

Hearing Date: **March 10, 2010** **Department Fifteen** **9:00 a.m.**

Defendants Nationwide Mutual Insurance Company and Allied Property and Casualty Insurance Company's renewed motion for summary adjudication, is **GRANTED IN PART**. Plaintiffs' breach of contract and breach of the implied covenant of good faith and fair dealing causes of action concerning the water wagon (and other equipment) are time barred under the suit limitation provision of the subject policy. (Ins. Code, §§ 2070 & 2071; Code Civ. Proc., § 437c, subds. (f)(1) & (p)(2); Separate Statement of Undisputed Material Facts 1-16; *Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1853; Dec. of Pardini, ¶ 2.b., Exh. B.)

Defendants' renewed motion for summary adjudication as to the second, third, fourth, fifth and sixth causes of action regarding the claim for loss of livestock is **DENIED**. A party may not move for summary judgment "based on issues asserted in a prior motion for summary adjudication" that has been denied by the court ... unless newly-discovered facts or circumstances supporting these issues, or a change of law, are established to the satisfaction of the court. (Code Civ. Proc., § 437c(f)(2); *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103-1105.) Defendants have not established that the renewed motion is based on newly discovered facts, circumstances or law.

Defendants' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

If no hearing is requested, defendants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.